

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAGISTRATE JUDGE RBC

India House of Massachusetts, Inc.,

Plaintiff

v.

Grinnell Corporation,

Defendant

Case No. **04 12004 RCL**

RECEIPT # 58724
AMOUNT \$ 150.00
SUMMONS ISSUED NA
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK M.P.
DATE 9/16/04

NOTICE OF REMOVAL

Defendant SimplexGrinnell LP, formerly known and sued herein as "Grinnell Corporation," (hereinafter "SimplexGrinnell" or "this Defendant"), by its undersigned counsel, files this Notice of Removal and states the following facts:

1. The plaintiff has incorrectly named Grinnell Corporation as the defendant in a suit filed on or about August 9, 2004 in the Superior Court of Middlesex County, Massachusetts.
2. The proper defendant in this case is SimplexGrinnell.
3. The Complaint was docketed in that court as Case No. 04-3132.
4. A copy of the Complaint was served upon SimplexGrinnell on August 17, 2004.
5. The action is removable under 28 U.S.C. §1441. The suit is of a civil nature and the nature and extent of the damages alleged therein demonstrate that the amount in controversy between the plaintiff and the defendant exceeds the sum of \$75,000.00,

exclusive of interest and costs. This action is one over which this Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1332.

6. At the time of the commencement of this action, and at all times since, SimplexGrinnell was, and is now, a Delaware limited partnership with its principal place of business in Florida.

7. At the time of the commencement of this suit, and at all times since, the plaintiff is alleged to be a Massachusetts corporation, doing business as Bombay Club in Cambridge, Massachusetts.

8. It is believed and therefore averred that at the time of the commencement of this suit, and at all times since, the plaintiff was and is a Massachusetts corporation with a principal place of business in Massachusetts.

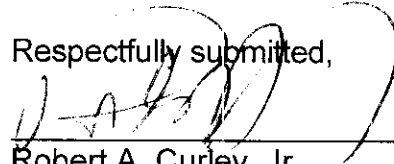
9. As the plaintiff is a Massachusetts corporation and the named defendant is a foreign limited partnership, complete diversity of citizenship exists.

10. Defendant incorporates herein the documents annexed as Exhibit 1, and states that said Exhibit constitutes copies of all process, pleadings, papers and/or orders served upon SimplexGrinnell in the suit pending in the Superior Court of Middlesex County, Massachusetts, at the time this Notice of Removal was filed. Defendant states that no further process, pleadings, papers and/or orders have been served upon SimplexGrinnell in the suit pending in the Superior Court of Middlesex County, Massachusetts.

11. Defendant has given written notice of the filing of this Notice of Removal to the plaintiff. Defendant has filed a copy of this Notice of Removal with the Clerk of the Superior Court of Middlesex County.

12. Defendant therefore prays that this action be removed to the United States District Court for the District of Massachusetts, and that no further proceedings be had in the Superior Court of Middlesex County, Massachusetts.

Respectfully submitted,



Robert A. Curley, Jr.

BBO# 109180

CURLEY & CURLEY, P.C.

27 School Street

Boston, MA 02108

Telephone: (617) 523-2990

Facsimile: (617) 523-7602

**ATTORNEYS FOR DEFENDANT
SIMPLEXGRINNELL LP**

Of Counsel:

Scott E. Massengill
WHITNEY & BOGRIS, LLP
401 Washington Avenue
Twelfth Floor
Towson, MD 21204

**CIVIL ACTION
COVER SHEET**

DOCKET NO.(S)

04-3132Trial Court of Massachusetts
Superior Court Department
County: MIDDLESEX

PLAINTIFF(S)

India House of Massachusetts Inc, d/b/a
Bombay Club

DEFENDANT(S)

Grinnell Corporation

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

Thomas P. McCusker Jr. 580 High St., P.O.Box 401
Westwood, MA 02090
Board of Bar Overseers number: 330300

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (A
trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from
judgment/Order (Mass.R.Civ.P. 60) (X)
- ☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
B04	Negligence property damage F		(XX) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|--|----------|
| 1. Total hospital expenses | \$ |
| 2. Total Doctor expenses | \$ |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |
| Subtotal \$ | |

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe)

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

"Plaintiff operates a restaurant, defendant was responsible for inspecting and cleaning the duct work in kitchen, fire began in duct work that had been inspected and cleaned 30 days prior, plaintiff sustained damage to premises & loss of income

TOTAL \$144,984.

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rule Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE: 9/16/04

5. On or about October 18, 2001 Defendant Grinnell performed a tri-annual inspection at the Plaintiff Bombay Club's premises and serviced, cleaned and inspected the kitchen duct work.

6. On or about November 16, 2001 a fire occurred on the Plaintiff Bombay Club's premises, which fire originated in the kitchen ducts which had been inspected, cleaned and serviced by the Defendant Grinnell.

7. Plaintiff Bombay Club sustained damage to the premises as a consequence of the fire, as well as damage to Plaintiff Bombay Club's equipment and personal property and a loss of business income.

COUNT I

Breach of Contract

8. Plaintiff Bombay Club repeats and realleges its allegations contained in Paragraphs 1 through 7 of the Complaint as if set forth herein in full.

9. On or before October 18, 2001, Plaintiff had entered into a contract with the Defendant Grinnell to service, clean and inspect the kitchen duct work at the Plaintiff Bombay Club's premises.

10. Defendant Grinnell failed to perform in accordance with the contract by failing to properly service, clean and inspect the kitchen duct work.

11. As a direct and proximate cause of Defendant Grinnell's breach of contract, a fire occurred on Plaintiff Bombay Club's premises and the Plaintiff Bombay Club sustained damage to the premises, its personal property and equipment and a loss of business income.

WHEREFORE, Plaintiff Bombay Club prays for judgment against Defendant Grinnell in an amount sufficient to fairly and reasonably compensate Plaintiff for all damages, together with interest and costs.

COUNT II

Negligence

12. Plaintiff Bombay Club repeats and realleges its allegations contained in Paragraphs 1 through 7 of Plaintiff's Complaint as if set forth herein in full.

13. Defendant Grinnell had a duty to exercise reasonable care in the performance of the servicing, cleaning and inspecting of the Plaintiff Bombay Club's kitchen duct work.

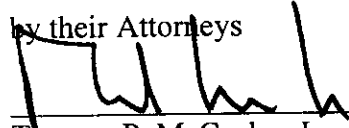
14. Defendant Grinnell breached its duty by its failure to properly service, clean and inspect the kitchen duct work and otherwise failed to use due care under the circumstances.

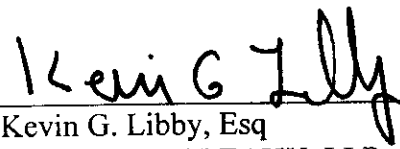
15. As a direct and proximate result of the negligence of Defendant Grinnell, a fire occurred on the Plaintiff Bombay Club's premises, which fire caused damage to Plaintiff Bombay Club's premises, personal property and equipment and a loss of business income.

WHEREFORE, Plaintiff Bombay Club prays for judgment against Defendant Grinnell in an amount sufficient to fairly compensate Plaintiff Bombay Club for its damage, together with interest and costs.

India House of Massachusetts Inc.
d/b/a Bombay Club,

by their Attorneys



Thomas P. McCusker Jr.
BBO#330300
580 High Street
Post Office Box 410
Westwood, MA 02090
781-251-2579

Kevin G. Libby, Esq
MONAGHAN LEAHY, LLP
95 Exchange Street
Portland Maine 04112
(207) 774-3906

TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: —
TORT — MOTOR VEHICLE TORT — CONTRACT —
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX ss
[seal]

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION

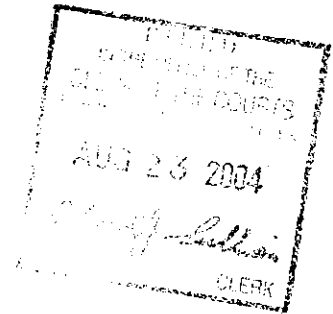
No. 04-3132 E

India House of Massachusetts
d/b/a Bombay Club Plaintiff(s)

v.

Grinnell Corporation Defendant(s)

SUMMONS



To the above-named Defendant:

You are hereby summoned and required to serve upon Thomas P. McCusker Jr.,
plaintiff's attorney, whose address is 580 High Street,
Post Office Box 401, Westwood, MA 02090, an answer to the complaint which is herewith
served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you
fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also
required to file your answer to the complaint in the office of the Clerk of this court at 40 Thorndike Street,
East Cambridge, Massachusetts 02141 either before service upon plaintiff's attorney or within a
reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DeVecchio, Esquire, at Cambridge
the ninth day of August
in the year of our Lord 2004

Edward J. Sullivan
Clerk

NOTES:

1. This summons is issued pursuant to Rule 1 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT

DEPARTMENT

OF THE

TRIAL COURT

CIVIL ACTION

No. 2004-3132

India House of Massachusetts

d/b/a Bombay Club

Plf.

v.

Grinnell Corporation

Def.

SUMMONS

(Mass. R. Civ. P. 4)

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N.B. TO PROCESS SERVER:
PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX
ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.



Suffolk County Sheriff's Department • 45 Bromfield Street • Boston, MA 02108 • (617) 989-6999
Suffolk, ss.

On September 14, 2004, I, Charles S. Cottrell, Sheriff of the County of Suffolk, Massachusetts, served a true and correct copy of the summons and complaint on the defendant in the following manner: I personally delivered a copy of the summons and complaint to the defendant, Grinnell Corporation, at its office, 45 Bromfield Street, Boston, MA 02108, Travel #111, on September 14, 2004, at 10:00 AM. The cost of service was \$40.00.

John Cottrell
Deputy Sheriff

**Commonwealth of Massachusetts
County of Middlesex
The Superior Court**

CIVIL DOCKET # MICV2004-03132-E

RE: **India House Of Massachusetts, Inc., d/b/a Bombay Club v Grinnell Corporation**

TO: Thomas P McCusker Jr, Esquire
580 High Street
PO Box 401
Westwood, MA 02090

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

<u>STAGES OF LITIGATION</u>	<u>DEADLINE</u>
Service of process made and return filed with the Court	11/07/2004
Response to the complaint filed (also see MRCP 12)	01/06/2005
All motions under MRCP 12, 19, and 20 filed	01/06/2005
All motions under MRCP 15 filed	01/06/2005
All discovery requests and depositions completed	06/05/2005
All motions under MRCP 56 served and heard	07/05/2005
Final pre-trial conference held and/or firm trial date set	08/04/2005
Case disposed	10/03/2005

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session "E" sitting in **Rm 7B (Cambridge) Middlesex Superior Court.**

Dated: 08/12/2004

Edward J. Sullivan
Clerk of the Court

Location: Rm 7B (Cambridge)
Telephone: 617-494-4010 EXT 4254

BY: Arthur B. Sutherland
Assistant Clerk

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

**CIVIL ACTION COVER SHEET
INSTRUCTIONS**

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

CONTRACT			REAL PROPERTY			MISCELLANEOUS		
A01	Services, labor and materials	(F)	C01	Land taking (eminent domain)	(F)	E02	Appeal from administrative	
A02	Goods sold and delivered	(F)	C02	Zoning Appeal, G.L. c.40A	(F)		Agency G.L. c. 30A	
A03	Commercial Paper	(F)	C03	Dispute concerning title	(F)	E03	Action against Commonwealth	
A08	Sale or lease of real estate	(F)	C04	Foreclosure of mortgage	(X)		Municipality, G.L. c.258	
A12	Construction Dispute	(A)	C05	Condominium lien and charges	(X)	E05	All Arbitration	
A99	Other (Specify)	(F)	C99	Other (Specify)	(F)	F07	c.112,s.12S (Mary Moe)	
TORT			EQUITABLE REMEDIES			E08	Appointment of Receiver	
B03	Motor Vehicle negligence		D01	Specific performance of contract	(A)	E09	General contractor bond,	
	personal injury/property damage	(F)	D02	Reach and Apply	(F)		G.L. c.149,s.29,29a	
B04	Other negligence personal		D06	Contribution or Indemnification	(F)	E11	Workman's Compensation	
	injury/property damage	(F)	D07	Imposition of Trust	(A)	E14	Chapter 123A Petition-SDP	
B05	Products Liability	(A)	D08	Minority Stockholder's Suit	(A)	E15	Abuse Petition, G.L.c.209A	
B06	Malpractice-medical	(A)	D10	Accounting	(A)	E16	Auto Surcharge Appeal	
B07	Malpractice-other(Specify)	(A)	D12	Dissolution of Partnership	(F)	E17	Civil Rights Act, G.L.c.12,s.11H	
B08	Wrongful death,G.L.c.229,s2A	(A)	D13	Declaratory Judgment G.L.c.231A	(A)	E18	Foreign Discovery proceeding	
B15	Defamation (Libel-Slander)	(A)	D99	Other (Specify)	(F)	E96	Prisoner Cases	
B19	Asbestos	(A)				E97	Prisoner Habeas Corpus	
B20	Personal Injury-Slip&Fall	(F)				E99	Other (Specify)	
B21	Environmental	(A)						
B22	Employment Discrimination	(F)						
B99	Other (Specify)	(F)						

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall treat the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT, BUFF COLOR PAPER.

**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**